

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

JOE LUNA,

Plaintiff,

v.

No. 15cv25 MV/LAM

DEPARTMENT OF AIR FORCE,

Defendant.

MEMORANDUM OPINION AND ORDER
DENYING MOTION TO PROCEED *IN FORMA PAUPERIS*

THIS MATTER comes before the Court on *pro se* Plaintiff Joe Luna's Application to Proceed in District Court Without Prepaying Fees or Costs, Doc. 2, filed January 9, 2015. For the reasons stated below, the Court will **DENY** Plaintiff's Application. Plaintiff shall have three weeks from entry of this Order to pay the \$400.00 fee¹ for instituting a new case. Failure to timely pay the fee may result in dismissal of this case without prejudice.

The statute for proceedings *in forma pauperis*, 28 U.S.C. § 1915(a), provides that the Court may authorize the commencement of any suit without prepayment of fees by a person who submits an affidavit that includes a statement of all assets the person possesses and that the person is unable to pay such fees.

When a district court receives an application for leave to proceed in forma pauperis, it should examine the papers and determine if the requirements of [28 U.S.C.] § 1915(a) are satisfied. If they are, leave should be granted. Thereafter, if the court finds that the allegations of poverty are untrue or that the action is frivolous or malicious, it may dismiss the case[.]

Menefee v. Werholtz, 368 Fed.Appx. 879, 884 (10th Cir. 2010) (citing *Ragan v. Cox*, 305 F.2d 58, 60 (10th Cir. 1962).


¹ The fee for instituting any civil action, suit or proceeding is comprised of a \$350.00 filing fee, *see* 28 U.S.C. §1914, and a \$50.00 administrative fee.

The Court will deny Plaintiffs' Application to Proceed in District Court Without Prepaying Fees or Costs. Plaintiff states that: (i) his and his wife's combined monthly income is \$4,000.00; (ii) their monthly expenses are \$4,229.00; (iii) Plaintiff and his wife have \$500.00 in cash; and (iv) the amount in their joint checking account varies from \$300.00 to \$1,200.00. In response to the instruction to "provide any other information that will help explain why you cannot pay the costs of these proceedings," Plaintiff stated that his daughter is in high school awaiting graduation and that he will financially assist her when she attends NMSU. Although Plaintiff asserts that he will financially assist his daughter with college expenses, it appears that he is presently able to pay the \$400.00 fee for instituting a new case because he has \$500.00 in cash and \$300.00 or more in his checking account. *See Scherer v. Kansas*, 263 Fed.Appx. 667, 669 (10th Cir. 2008) ("[A]n application to proceed *in forma pauperis* should be evaluated in light of the applicant's present financial status.") (citing *Holmes v. Hardy*, 852 F.2d 151, 153 (5th Cir.1988)).

Plaintiff shall have three weeks from entry of this Order to pay the \$400.00 fee. Failure to timely pay the fee may result in dismissal of this case without prejudice.

IT IS ORDERED THAT Plaintiff Joe Luna's Application to Proceed in District Court Without Prepaying Fees or Costs, Doc. 2, filed January 9, 2015, is **DENIED**.

IT IS ALSO ORDERED THAT Plaintiff shall have three weeks from entry of this Order to pay the \$400.00 fee.



MARTHA VAZQUEZ
UNITED STATES DISTRICT JUDGE